MAHADEV LALCHAND

v.

STANDARD CHARTERED BANK

COURT OF APPEAL, KUALA LUMPUR
NH CHAN JCA
ABU MANSOR ALI JCA
AHMAD FAIRUZ JCA
[CIVIL APPEAL NO: W-02-134-1996]
1 DECEMBER 2000

NEGOTIABLE INSTRUMENTS: *Bill of exchange - Enforceability - Whether conditional - Whether acceptance qualified - Effect of words "documents against acceptance" - Whether a proper case for summary judgment - Whether there were triable issues - Bills of Exchange Act 1949, s. 19(3)*

The respondent applied for summary judgment on the ground that the appellant had failed to comply with the respondent's demand for payment of the sum specified in a bill of exchange together with interest and notarial expenses. The senior assistant registrar allowed the application and the judge in chambers upheld it. The appellant appealed submitting that the words "documents against acceptance" endorsed on the bill had rendered the bill conditional. The appellant also submitted that this was not a fit and proper case for summary judgment.

Held:

Per Ahmad Fairuz JCA

[1] The learned judge was correct in holding that the words "documents against acceptance" did not render the bill a conditional order. There was nothing on the face of the bill that clearly showed that the symbol "D/A" formed an essential part of the drawer's order to the drawee.

[Appeal dismissed with costs.]

*[**Bahasa Malaysia** Translation Of Headnotes]*

Responden telah memohon penghakiman terus atas sebab perayu telah gagal menurut tuntutan responden untuk bayaran jumlah yang ditentukan dalam bil pertukaran. Hakim yang bijaksana telah membenarkan permohonan itu. Perayu membuat rayuan menentang keputusan itu dengan memberikan alasan bahawa perkataan "documents against acceptance" yang diendors di bil itu menjadikan bil itu bersyarat.

Diputuskan:
Oleh Ahmad Fairuz HMR

[1] Hakim yang bijaksana memang betul dalam memutuskan bahawa perkataan "documents against acceptance" tidak menyebabkan bil itu bersyarat. Dalam muka bil itu, tidak ada apa-apa kesan pun yang menunjukkan yang simbol "D/A" itu membentukkan bahagian yang sangat penting dalam arahan penyuruh bayar terhadap pembayar.

[Rayuan ditolak dengan kos.]

Case(s) referred to:
Korea Exchange Bank v. Debenhams (Central Buying) Ltd [1979] 1 Lloyd's Law Reports 548 ***(refd)***
Lloyd's Bank International v. Max Engineering (S'pore) Pte Ltd [1983] 2 MLJ 177 ***(refd)***

Legislation referred to:
Bills of Exchange Act 1949, s. 19(3)
Courts of Judicature Act 1964, s. 42

For the appellant - David Morais (N Sivanathan with him); M/s M David Morais
For the respondent - J Doshi; M/s Abdullah & Zainuddin

[Appeal from High Court, Kuala Lumpur; Civil Suit No: C24-3442-86]

Reported by Suhainah Wahiduddin

JUDGMENT

Ahmad Fairuz JCA:

This appeal was heard by us on 17 March 1998. We then reserved judgment. Since then, NH Chan, JCA. Chairman of this court had retired. This judgment is therefore made under s. 42 of the Courts of Judicature Act 1964.

The appellant is a sole proprietor of a business known as Ranai Enterprise. The respondent claims that the appellant had duly accepted a bill of exchange (the bill) dated 19 June 1984 drawn upon the appellant and made payable to the respondent. The bill, however, when presented for payment, was dishonoured. The respondent demanded payment from the appellant of the sum specified in the bill together with interest and notarial expenses. As the appellant failed to comply with the demand, the respondent filed its statement of claim dated 28 June 1986 (Appeal Record, pp. 23 and 24). On 23 October 1986 the respondent applied for summary judgment (Appeal Record, pp. 26 and 27). On 28 April 1988 the senior assistant registrar granted the respondent's application (Appeal Record, pp. 28 and 29). On 30 April 1988

the appellant appealed to the judge in chambers (Appeal Record, p. 32). On 28 August 1995 the learned High Court judge dismissed his appeal (Appeal Record, pp. 9 and 10). On 13 March 1996 the appellant then appealed to us (Appeal Record, pp. 14 and 15).

Before us the appellant submitted that the words "documents against acceptance" ('those words') endorsed on the bill rendered the bill conditional and as such unenforceable. In the alternative, the appellant contended that those words rendered the bill to be subject to a qualified acceptance pursuant to s. 19(3) of the Bills of Exchange Act 1949. It was then argued that the issue of whether the bill was rendered conditional or subject to a qualified acceptance is a mixed question of law and fact. As such, it is not suitable for the issue to be disposed of by way of summary judgment procedure. It was also contended that those words constitute a notification to the appellant that the bill will only be accepted on presentation of documents and this fact is binding on those who take the bill as holders such as the respondent. This issue, according to the appellant, can only be determined after considering principles of common banking practice which will require considerations of expert evidence. Hence, the procedure for summary judgment is not proper in the circumstances.

For the respondent, it was argued that those words do not constitute a conditional acceptance. The respondent submitted that those words show a general unconditional acceptance. Hence, there were no triable issues and the learned High Court judge and the senior assistant registrar were right in granting the summary judgment.

In support of their arguments, both parties made reference to the case of *Llyod's Bank International v. Max Engineering (S'pore) Pte. Ltd.* [1983] 2 MLJ 177. The learned High Court judge referred to that case when he held that those words "do not in any way render the bill a conditional order".

Lloyd's case makes reference to the case of *Korea Exchange Bank v. Debenhams (Central Buying) Ltd.* [1979] 1 Lloyd's Law Reports 548 wherein, at p. 550, Megaw LJ quoted the relevant part of the bill of exchange involved in the case thus:

> BILL OF EXCHANGE Date SEPT. 28, 1974 Seoul, Korea FOR US$298.048 At 90 days D/A FIRST BILL OF EXCHANGE ... PAY TO Korea Exchange Bank OR ORDER ...

The common ground between the parties as to the meaning of the symbol "D/A" in commercial usage is that it means "documents against acceptance". On those words, Megaw LJ said:

As I understand it, the phrase would be used in connection with a transaction for the sale of goods where the contract of sale involves transfer of title to the goods by delivery of documents and provides for payment by means of an accepted bill of exchange. The seller would draw the bill on the buyer. The buyer would be obliged by the terms of the contract of sale, *vis-a-vis* the seller, to accept the bill on its presentation to him by the seller or by some other person, whether the seller's agent or someone to whom the bill had been transferred by indorsement before acceptance; but the buyer's contractual obligation to the seller to accept the bill would exist only if the bill were to be presented accompanied by the proper documents relating to the goods, which documents would, on acceptance, be handed over to the buyer.

If the bill itself contains words by which the drawer's (the seller's) order to the drawee (the buyer) to pay is made a requirement which need be complied with only if the proper documents are produced, then the effect might be – we do not have to decide such a question on this preliminary issue – that the purported bill of exchange would not have the status of a bill of exchange under the Bills of Exchange Act 1882, because the drawer's order to the drawee might lack the essential quality of being an unconditional order to pay as stipulated by s. 3(1) of the Act.

At p. 551 of the report, Megaw LJ quoted to the following passage from the judgment of the learned trial judge:

But bearing in mind that "sight" means "acceptance", I find no real difficulty in making sense of the expression "At 90 days D/A ... Pay". It simply means "Pay 90 days after acceptance in exchange for documents", the words "in exchange for documents" being, as the Institute of Bankers says, an informative memorandum and not a condition ...

Megaw LJ then said:

In his reference to the Institute of Bankers, the learned Judge was referring to the answer to Question 201 in "Questions on Banking Practice", issued by the Institute, 10th ed. (1965). The answer does not use the words used by the Judge, "acceptance in exchange for documents". The answer of the oracle, reflecting some of the traditional quality of the Delphic oracle, reads:

> It is considered that such an instruction [that is, "Documents on acceptance, abbreviated **D/A] is merely a memorandum, not rendering the bill a conditional order,** and that it is binding on all holders who take the bill and documents ...

As I understand, what is said is or includes the proposition that the "instruction" or "memorandum" which is embodied in the symbol **"D/A"** in an instrument purporting to be a bill of exchange, whatever else it may be or do, **is not to be treated as being a part of the order** directed by the drawer to the drawee.

And at p. 552 Megaw LJ said:

> **'D/A' in commercial usage is ordinarily, at least, not any part of the order** to pay directed to the drawee. **If a part of the symbol is to become an essential part of the drawer's order to the drawee, this has to be made clear on the face of the instrument.** In this instrument, in my judgment, it, at the best, falls short of the necessary clarity.

In the light of the above-quoted passages, it is very clear that the learned trial judge was right when he held that those words do not render the bill a conditional order. We find nothing on the face of the bill to clearly show that the symbol 'D/A' forms an essential part of the drawer's order to the drawee. In the cirsumstances, we have no alternative except to dismiss the appeal with costs.